IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CWP No.969 of 2001
Judgment Reserved on:11.04.2007
Decided on: April 13, 2007.

Sushil Sharma. **…..Petitioner.**

VERSUS

State of H.P. & Ors. **…..Respondents.**

Coram

The Hon'ble Mr. Justice V.K.Ahuja, Judge.

The Hon'ble Mr.Justice Kuldip Singh, Judge.

Whether approved for reporting?[1] No

For the Petitioner: **Mr.Onkar Jairath, Advocate.**

For the Respondents: **Mr.Ashutosh Burathoki, Addl.A.G.**

Per Kuldip Singh, Judge.

The petitioner has challenged judgment dated 15th March, 2001 passed by H.P. Administrative Tribunal (for short 'Tribunal') in O.A. No.1874 of 1991 whereby the Tribunal has held that the petitioner is eligible only for minimum of pay scale but not allowances.

2. The case of the petitioner is that he was offered appointment purely on tenure basis as Lecturer in Mechanical Engineering vide office order dated 13th February, 1989 (Annexure P-2) but his services were terminated on 11th June, 1990. He was again re-appointed purely on ad-hoc basis in Government Polytechnic College for Women at Kandaghat on 25th July, 1990 but his services

---

[1] ***Whether the reporters of the local papers may be allowed to see the Judgment? Yes***

were terminated illegally on 25th October, 1990. He was again re-appointed on the same post vide office order dated 30th October, 1990 (Annexure P-3). The services of the petitioner were terminated after six months. The petitioner was again re-appointed vide office order No.376 dated 4th May, 1991 (Annexure P-4) and his services were terminated on 7th August, 1991 vide Annexure P-5. The petitioner was given fixed salary of Rs.2200 + Rs.200 as Special Pay, total Rs.2400/-

3. The petitioner against termination order dated 7th August, 1991 (Annexure P-5) filed OA No.1874 of 1991 before the Tribunal. In Original Application the learned Tribunal on 19th December, 1991 granted stay and the petitioner was re-engaged on the same post. During the pendency of the Original Application, the petitioner was granted basic pay and other allowances w.e.f. 19th December, 1991 till he left the job and joined other department.

4. The post of Lecturer in Government Polytechnic is 50% by way of direct recruitment through Public Service Commission and 50% from the lower posts in the department such as Demonstrators having Diploma in Engineering. The persons, who are having Diploma in Engineering, are given training and promoted as Lecturer in the pay scale of Rs.2200-4000 plus other allowances. These persons perform the same duties as performed by the petitioner but the petitioner was discriminated and was given only Rs.2200 plus Rs.200 Special Pay, which is highly discriminatory and in violation of equal pay for equal work. It is also the case of the petitioner that other similarly situated persons who are having requisite qualifications but no experience, like the petitioner, were dealt with by the department differently. Some of

these persons were granted pay scale of Rs.2200-4000 plus other allowances and the petitioner was given only a fixed salary of Rs.2200 plus Rs.200 Special Pay i.e. total Rs.2400. In brief, the petitioner has sought direction against the respondents to pay basic salary plus allowances. At the time of hearing of the writ petition, the petitioner confined his claim for the period September 1992 to January 1994.

5. The respondents No.1 to 3 have filed common reply. They have submitted that petitioner was appointed as Lecturer in Mechanical Engineering purely on ad-hoc / stop gap arrangement basis on 13th February, 1990 for a period of six months or till the regular incumbent joins his duties against the post rendered vacant by a regular Demonstrator of Mechanical Engineering. The regular incumbents joined the duties in Mechanical Engineering discipline and, therefore, the petitioner became surplus and his services were terminated on 11th June, 1990. The petitioner was re-appointed purely on ad-hoc / stop gap arrangement basis for a period of three months on the post of Workshop Superintendent Mechanical Engineering. The petitioner became surplus on account of promotion of Demonstrators / Instructors as Lecturer in Mechanical Engineering or workshop Superintendent in Mechanical Engineering, therefore, the services of the petitioner were again terminated on 25th October, 1990. However, a regular incumbent could not be promoted to the post of Workshop Superintendent Mechanical Engineering and, therefore, the petitioner was again re-appointed on 30th October, 1990 for a period of six months purely on ad-hoc / stop gap arrangement basis. The services of the petitioner were again terminated after completion of six

months period. The petitioner was again re-appointed on same terms and conditions for a period of three months or till filling up the post on regular basis whichever is earlier. The petitioner was not re-appointed and his services were terminated in August, 1991. The petitioner filed Original Application before the Tribunal, which stayed the operation of termination order of the petitioner dated 7th August, 1991 and also directed respondents to re-employ the petitioner before 31st January, 1992. In compliance to the interim order passed by the learned Tribunal, the petitioner was re-appointed as Workshop Superintendent Mechanical Engineering on the same terms and conditions for a period of six months on ad-hoc / stop gap arrangement basis vide office order No.260 dated 13th January, 1992 (Annexure R-1). The petitioner left the department in June, 1994 to join another organization.

6. The grant of salary to ad-hoc employees not possessing the requisite experience for the post of Lecturer / Workshop Superintendent Mechanical Engineering as per Recruitment & Promotion Rules was regulated by the decision of the Government contained in Annexure R-2. The persons not possessing the requisite experience as prescribed in Recruitment & Promotion Rules were to be given the minimum scales without allowances and accordingly the petitioner was only paid salary along with Special Pay of the Lecturer Workshop Superintendent Mechanical Engineering and not other allowances. Some persons were appointed after relaxing the necessary experience. The action of the respondents has been upheld by the learned Tribunal in the impugned judgment. It is the specific stand of the respondents that the petitioner's pay was fixed at

Rs.2200 plus Rs.200 Special Pay and he was not given allowances as the petitioner was not possessing the requisite experience. The respondents prayed for dismissal of the writ petition.

7. The Tribunal, as noticed above, vide impugned judgment, has held that though the petitioner possessed the minimum educational qualification but was not possessing the required experience as prescribed in the Recruitment & Promotion Rules, therefore, he was eligible only for minimum pay scale but not allowances.

8. We have heard the learned counsel for the parties and have also gone through the record.

9. The learned counsel for the petitioner has submitted that the petitioner is entitled to scale of Rs.2200-4000 plus other allowances as has been given to some of the Lecturers in Mechanical Engineering or Workshop Superintendent Engineering. The denial of scale of Rs.2200-4000 plus allowances to the petitioner is discriminatory and against the principles of equal pay and equal work and in violation of Article 14 of the Constitution. It has been submitted that the petitioner is entitled to the same scale and allowances which have been given to other similarly situated persons.

10. On the contrary, the learned Additional Advocate General has submitted that though the petitioner was having the necessary qualification but he did not have the requisite experience, therefore, he was entitled to only Rs.2200 plus Rs.200 Special in all Rs.2400/- pay per month, which was rightly paid to him by the respondents. The petitioner was offered appointment(s) vide Annexures P-2 to P-4 on

the specific condition that he would be entitled to fix pay of Rs.2200 plus Rs.200 Special Pay only. The petitioner accepted the appointment offered by the respondents without any reservation. Therefore, the claim of the petitioner over and above Rs.2200 plus Rs.200 Special Pay is not tenable. The petitioner was not having the requisite experience for the post. The principle of equal pay for equal work is not applicable nor the respondents have violated Article 14 of the Constitution.

11. It is clear from Annexure R-1 dated 13th January, 1992 that Teaching personnel (ad-hoc) who do not fulfil all the educational qualification for the post but possess the minimum educational qualification prescribed for the post were to be given minimum of the pay scale without any allowances, whereas teaching personnel (ad-hoc) who fulfil educational qualifications prescribed for the post in accordance with Recruitment & Promotion Rules / draft rules are to be given minimum of the pay scales plus allowances except house rent allowances and compensatory allowances. The Tribunal has recorded specific finding that the petitioner was having minimum educational qualification but he was not possessing the requisite experience for the post on which he was appointed. It is not the case of the petitioner that he was having the requisite experience for the post along with the requisite minimum educational qualification. Therefore, the petitioner was not fulfilling all the qualifications prescribed for the post on which he was appointed. In these circumstances, he would be entitled to only minimum of the pay scale without any allowances. The petitioner has rightly been given

minimum pay of Rs.2200 plus Rs.200 Special Pay. The principle of equal pay for equal work is not applicable in the present case nor a case of discrimination and violation of Article 14 of the Constitution has been made out by the petitioner. The petitioner had accepted the offer of appointment without demur, as noticed above. He cannot be permitted to say that he is entitled to basic pay scale with all allowances on the posts he was appointed. The learned Tribunal has considered the case of the petitioner in the right perspective and has rightly rejected the claim of the petitioner for higher scale than Rs.2200 plus Rs.200 Special Pay, total Rs.2400 per month fixed. The petitioner has failed to make out any case for interference.

12. No other point was urged.

13. In view of the above discussion, the petition is dismissed, impugned judgment is affirmed and the parties are left to bear their own costs.

(Kuldip Singh),J. ***(V.K. Ahuja),J.***

April 13, 2007
(soni)

2656824